

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No.2930 of 2005
To
FIRST APPEAL No.2943 of 2005**

For Approval and Signature:

**HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
 - 2 To be referred to the Reporter or not?
 - 3 Whether Their Lordships wish to see the fair copy of the judgment?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
 - 5 Whether it is to be circulated to the Civil Judge?

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**SPL.LAQ OFFICER - Appellant
Versus
KARSHANBHAI MOHANBHAI PATEL & ANR. - Respondents**

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Appearance :
MR SS PATEL, AGP for Appellant.
MR AJ PATEL for Original Claimants.
None for Respondent No.2-Acquiring Body.

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**CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 24/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing these appeals under Section 54 of the

Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the Special Land Acquisition Officer has challenged legality of common judgment and award dated November 24, 2003 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case No.116 of 2000 to Land Acquisition Case No.129 of 2000 by which the claimants have been awarded additional compensation at the rate of Rs.182/- per square metre over and above the compensation of Rs.14.40/- per square metre awarded by the Land Acquisition Officer for their acquired lands.

2. The Executive Engineer, Narmada Project, Division No.4, Gandhinagar, proposed to the State Government to acquire agricultural lands of Village: Khoraj, Taluka: Gandhinagar; District: Gandhinagar, for the public purpose of construction of Narmada Canal. On receipt of the proposal, the State Government was satisfied that the agricultural lands of Village: Khoraj were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in official gazette on November 20, 1997. The landowners were thereafter served with the notices. They objected to the proposed

acquisition. After considering their objections, the Land Acquisition Officer submitted his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of Village: Khoraj, which were specified in the notification published under Section 4 of the Act, were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on June 12, 1998. Thereafter, the interested persons were served with the notices for determination of compensation payable to them. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.1,000/- per square metre. However, having regarding to the materials placed before him, the Special Land Acquisition Officer, by his award dated May 29, 2000, offered compensation to the claimants at the rate of Rs.14.40 per square metre. The claimants were of the view that the offer of the compensation made by the Land Acquisition Officer was totally inadequate. Therefore, they submitted applications in writing and required the Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, the References were made to

the District Court, Ahmedabad (Rural) at Navrangpura, which were numbered as Land Acquisition Case No.116 of 2000 to 129 of 2000.

3. On behalf of the claimants, witness Karshanbhai Mohanbhai Patel was examined at Exhibit 33. Over and above stating that the lands acquired were highly fertile and that each claimant was deriving substantial income from the sale of agricultural produces, the witness has stated that Village: Khoraj from which the lands were acquired, was fully developed. It was maintained by the said witness before the Reference Court that the lands, which were acquired in the instant case, were better in quality than the lands which were acquired earlier from Village: Adalaj. The witness relied upon the previous award of the Reference Court rendered in Land Acquisition Reference Case No.1346 of 1996 and allied matters, with reference to the lands of Village: Adalaj, and asserted before the Reference Court that the claimants were entitled to enhanced compensation on the basis of the said previous award of the Reference Court. Though this witness was cross-examined on behalf of the respondent, the assertion made by the witness that the lands of Village: Khoraj were better in all respects than the lands of Village: Adalaj, which were acquired earlier,

could not be demonstrated to be untrue. On behalf of the respondent, no one was examined though sufficient opportunity was given by the Reference Court. On appreciation of the evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court rendered in Land Acquisition Case No.1346 of 1996 & allied matters with reference to the lands of Village: Adalaj was a relevant piece of evidence for the purpose of determination of the market value of the lands acquired from Village: Khoraj. The Reference Court noticed that the claimants whose lands were acquired from Village: Adalaj were awarded compensation by the Reference Court at the rate of Rs.120/- per square metre for their acquired lands, with reference to notification under Section 4(1) of the Act which was published on August 1, 1991. In view of time gap in issuing notifications under Section 4(1) of the Act, in the instant cases, the Reference Court has awarded to the claimants compensation at the rate of Rs.196.40/- per square metre by judgment and award dated November 24, 2003, giving rise to the above numbered appeals.

4. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellant, and

Mr.A.J.Patel, learned counsel for the claimants, at length and in great detail. This Court has also considered the documents, which have been produced by the learned counsels for the parties, for perusal of the Court.

5. From the record of the case, it is evident that on behalf of the claimants, witness Karshanbhai Mohanbhai Patel was examined at Exhibit 33. According to him, the lands acquired were highly fertile and that each claimant was growing crops of rice, wheat, *jeeru*, millet, etc. What was maintained by him was that all the claimants were using high quality of seeds as a result of which, each claimant was able to raise substantial quantity of crops and that each claimant was earning Rs.30,000/- per year by way of sale of agricultural produces. It may be mentioned that in spite of this assertion, enhanced compensation was never claimed on the yield basis. The witness has further mentioned in his testimony that in Village: Khoraj, famous temple of Goddess *Vaishno Devi* is situated and Swaminarayan Gurukul Vidyalaya as well as container depot of Steel Authority of India Limited were quite near to the acquired lands. According to him, hotel business had developed near Village: Khoraj and that Hiramani School as well as Nirma Institute were also

located near the acquired lands. What is mentioned by the witness in his testimony is that the lands of Village: Khoraj were better in all respects than the lands of Village: Adalaj, which were acquired previously. In support of the claim for enhanced compensation, the witness produced award of the Reference Court rendered in Land Acquisition Reference No.1346 of 1996 and allied matters relating to the lands of Village: Adalaj at Exhibit 31. Though this witness was cross-examined on behalf of the acquiring body, nothing could be brought on record to indicate that the assertion made by this witness in his examination-in-chief, was untrue. Under the circumstances, this Court will have to proceed on the footing that the lands of Village: Khoraj were better in all respects than the lands of Village: Adalaj, which were acquired earlier. It is well settled principle of law that the previous award of the Reference Court relating to the lands of adjoining village, which has attained the finality, can be relied upon for the purpose of ascertaining market value of the lands acquired from another adjoining village. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court in Land Acquisition Reference No.1346 of 1996 and allied matters relating to the lands of Village:

Adalaj. A bare perusal of Exhibit 31 indicates that agricultural lands of Village: Adalaj were acquired for the public purpose of Narmada Canal pursuant to publication of notification under Section 4(1) of the Act in the official gazette on August 1, 1991 and therein the Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.30/- per square metre for non-agricultural lands; Rs.7.80/- per square metre for irrigated lands; and, Rs.5.20/- per square metre for non-irrigated lands. Feeling aggrieved, the claimants sought references and the Reference Court awarded in all Rs.120/- per square metre for agricultural lands and Rs.270/- per square metre for non-agricultural lands. It is well established that the price of the lands never remain steady. Therefore, the Reference Court in the instant case was justified in granting rise in price of the lands acquired at the rate of 10% per annum. However, this Court is of the opinion that while making the calculation, the Reference Court has committed error in awarding Rs.182/- per square metre as additional compensation payable to the claimants. In fact, after giving reasonable rise in the price of the acquired lands, the claimants would be entitled to additional compensation at the rate of Rs.177.60/- per square metre. Thus, in all the claimants would be entitled to

compensation at the rate of Rs.192/- per square metre and not @ Rs.196.40/- per square metre as held by the Reference Court. To this extent, the appeals will have to be partly allowed.

6. For the foregoing reasons, the appeals partly succeed. It is held that the claimants would be entitled to compensation at the rate of Rs.192/- per square metre and not at the rate of Rs.196.40/- per square meter as held by the Reference Court. Rest of the directions contained in the judgment and award of the Reference Court are not interfered with at all and are hereby upheld. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra